MA GUINEVERE GUY

v.

INDAH HOLDINGS SDN. BHD. & ORS.

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[CIVIL SUIT NO. C 3587 of 1984]
25 JUNE 1986

CIVIL PROCEDURE: *Application to stay execution proceedings pending hearing and disposal of appeal to Supreme Court - Absolute and unfettered discretion of Court to grant or refuse a stay - Special circumstances - Whether application should be allowed.*

This was an application by the 1st and 2nd defendants for an order of the court that all execution proceedings be stayed pending the hearing and disposal of the appeal by them to the Supreme Court against the learned Judge's earlier decision dismissing applications to set aside judgment in default of appearance.

The plaintiff filed the writ and statement of claim on 10 October 1984. On 4 February 1985 judgment in default of appearance was entered by the plaintiff against both the defendants. The two defendants filed two separate applications to set aside the judgment in default of appearance. The learned Judge dismissed both the applications with costs. The defendants then appealed to the Supreme Court, and the appeal is still pending.

In the instant case, the defendants filed an affidavit affirmed by the 2nd defendant. He averred that the plaintiff is a foreign national originating from the Philippines and now residing in Singapore, and that if the judgment sum is paid out to the plaintiff, irreparable damage may be due to the defendants in the event that they are successful in the appeal as recovery of the sum might be impracticable. He further averred that he believed that the plaintiff had no property within the jurisdiction of this Court which could be recovered if the defendants succeeded in the appeal. The facts stated in the affidavit were not disputed by the plaintiff.

Held:

[1] The Court has an absolute and unfettered discretion whether to grant or refuse a stay of execution. The Court will not deprive a successful party of the fruits of his litigation until an appeal is determined, unless the unsuccessful party can show special circumstances to justify it.

[2] There are special circumstances in the present case to grant a stay. Firstly, the plaintiff is a foreign national resident in Singapore. Secondly, the plaintiff has no assets within jurisdiction. If stay is not granted, the defendants will have to pay the judgment sum to the plaintiff, and should the defendants succeed in their appeal, there is no possibility of them getting back their money.

[Order that all execution proceedings be stayed pending outcome of appeal to Supreme Court.]

Cases referred to:
Leong Poh Shee v. Ng Kat Chong [1966] 1 MLJ 86
Serangoon Garden Estate Ltd. v. Ah Keng [1953] MLJ 116

For the applicants/defendants - Manjit Singh; M/s. Sri Ram, Zulkifly & Kumar
For the plaintiff/respondent - S.L. Chin; M/s. Skrine & Co.

JUDGMENT

Zakaria Yatim J:

This is an application by the first and second defendants for an order of the Court that all execution proceedings be stayed pending the hearing and disposal of the appeal by them to the Supreme Court against my earlier decision dismissing their applications to set aside judgment in default of appearance.

The plaintiff filed the writ and statement of claim on 10 October 1984. On 4 February 1985, judgment in default of appearance was entered by the plaintiff against both the defendants. The two defendants filed two separate applications to set aside the judgment given in default of appearance. The applications were heard by me on 24 January 1985, and after hearing the arguments of both Counsel for the plaintiff and the defendants, I dismissed the application with costs. The defendants then appealed to the Supreme Court against the order made by me on 24 January and the appeal is still pending.

As to the application for stay of execution, the Court has an absolute and unfettered discretion whether to grant or refuse a stay. However, it has never been the practice to grant a stay unless the application for stay is supported by an affidavit of special circumstances. *Leong Poh Shee v. Ng Kat Chong* [1966] 1 MLJ 86. The principle is that the Court will not deprive a successful party of the fruits of his litigation until an appeal is determined, unless the unsuccessful party can show special circumstances to justify it. *Serangoon Garden Estate Ltd. v. Ah Keng* [1953] MLJ 116.

In the instant case, the defendants filed an affidavit affirmed by the second defendant. In his affidavit, he averred that the plaintiff is a foreign national originating from the Philippines and now residing in the republic of Singapore. According to him, if the judgment sum is paid out to the plaintiff, irreparable damage may be due to the defendants in the event that they are successful in the appeal as recovery of the sum might be impracticable. The second defendant further averred that he believed that the plaintiff had no property, movable or immovable, within the jurisdiction of this Court which could be recovered if the defendants were successful in the appeal. The facts stated in the affidavit were not disputed by the plaintiff.

In my opinion, there are special circumstances in the present case to grant a stay. Firstly, the plaintiff is a foreign national resident in Singapore. Secondly, the plaintiff has no assets within jurisdiction. If stay is not granted, the defendants will have to pay the judgment sum to the plaintiff, and should the defendants succeed in their appeal, there is no possibility of them getting back their money.

In view of the special circumstances in this case, I order that all execution proceedings be stayed pending the outcome of the appeal to the Supreme Court.

Also found at [1986] 2 CLJ 450